

# **THE PROCEDURE OF THE INQUIRY AND RELATED MATTERS**

**18 FEBRUARY 2005**

## **Introduction**

1. These procedures have been drawn up taking account of previous papers and representations. In particular account has been taken of the proposals paper of 17 December 2004, the written responses from various interested parties, the proceedings at the preliminary public hearing on 3 February 2005 and submissions which were received subsequently.
2. These procedures are intended to give clear guidance as to how the Inquiry will conduct its work. As has been repeatedly emphasised however, they are not inflexible and they may have to be modified to take account of various developments in the months ahead.

## **Death of Lucy Crawford**

3. As a result of their ongoing inquiries, the Police Service for Northern Ireland has asked the Inquiry to defer its investigation into the events surrounding Lucy's death. Lucy's family has indicated its agreement to that course of action. The Inquiry has decided that it will defer its investigation but it cannot be assumed that this will continue indefinitely. The Inquiry will keep in contact with the PSNI and, in turn, the Director of Public Prosecutions.

## **Deaths of Adam Strain and Raychel Ferguson and General Issues**

4. There is widespread agreement that the Inquiry should continue its investigation into these issues notwithstanding the position which has been adopted in respect of

Lucy Crawford. Accordingly the Inquiry will proceed with all of its work with the single exception of its investigation of the circumstances surrounding Lucy's death.

### **Stages of the Inquiry**

5. In the paper of 17 December, the five stages of the Inquiry were identified. Each will be dealt with in turn below.

#### **Stage A – Document Gathering**

6. This process is continuing and the Inquiry team is working its way through those documents which have been received to ensure that they are complete. Each person or party who has provided documents has been advised by the Inquiry that it is required to retain all the originals in case inspection of the originals is required. Inspection may be sought by the Inquiry either on its own initiative or at the request of another interested party.

#### **Stage B – List of Issues**

7. Preparatory work on the list of issues has been started and will continue in the forthcoming weeks. It will be necessary to complete the identification of the relevant issues before the Inquiry seeks written statements from potential witnesses because those witnesses have to understand the issues which the Inquiry will address. When the list of issues is complete it will be placed on the website for comment and any suggestions about the adequacy or otherwise of the list will be considered.

### **Stage C – Witness Statements**

8. In keeping with precedents set by other inquiries, this Inquiry intends to produce standard form witness statements. It will then prepare a list of people who will be asked to complete a witness statement. In each case the person who is asked to complete a statement will have his or her attention drawn to the list of key issues but will also be asked to address some specific issues of particular relevance to him/her. It may be necessary for the Inquiry to ask for supplementary statements in light of information which it receives from other witnesses or to clarify or add to points made in the original witness statement.
9. The list of witnesses who have been asked to make written statements will be published on the Inquiry website. The Inquiry will consider any suggestions made to it that statements should be required from other witnesses. The Inquiry will also accept statements which are volunteered to it by people who have not been asked to give written statements. The Inquiry will publish statements which are received but will not be bound to include any parts of statements which are not relevant to the work of the Inquiry. This will avert the risk of abuse, deliberate or otherwise, of the statement process.

### **Stage D – Oral Evidence**

10. Having received the written statements the Inquiry will then decide which witnesses are required to give oral evidence. It is not anticipated that all people who have provided statements will be required to testify. The Inquiry will publish a list of those it intends to call and will also accept representations about whether others should be called too.

11. At the oral hearing witnesses will be questioned by Counsel for the Inquiry, Ms Monye Anyadike-Danes. They can then be cross examined by other interested parties, subject to constraints which have already been accepted by all parties as to duplication, repetition etc. Witnesses may then be questioned by the Chairman and perhaps also by the expert advisors who will attend with the Chairman but who will not themselves give evidence. Finally they can be questioned by their own legal representative. As was made clear at the preliminary hearing, a witness who is to be called will be notified in advance by the Inquiry of the areas upon which he/she will be questioned. Anyone else who wants to question a witness will have to notify the Inquiry in advance of that fact and identify the proposed areas of questioning. The witness will be advised of this fact. Co-operation on this is essential if a meaningful timetable is to be planned.
12. The Inquiry accepts in principle the suggestion that there should be opening and closing submissions on behalf of interested parties. The Inquiry proposes that these should be time limited and that the Inquiry and other parties should be notified in advance in writing of the outline of the submission.

### **Stage E – Report**

13. The Inquiry confirms that it is not its intention to circulate the draft report to individuals or bodies which may be the subject of criticism. However any person who is likely to be criticised in the report will be given an opportunity at the oral hearing to address any issues which might lead to criticism later. If necessary, the oral hearings may be reconvened for this purpose or a witness who has already given evidence may be recalled at a later point during the oral hearing.

## **OTHER ISSUES**

### **Legal Representation**

14. At the oral hearing on 3 February the Chairman indicated his acceptance of the contention that there should be cross examination of witnesses other than by Ms Anyadike-Danes. In light of that development, the Chairman will recommend to the Department of Health, Social Services and Public Safety that the families should be represented by Counsel at the oral hearing. At present each of the three families has a separate solicitor and Junior Counsel. The Chairman accepts that it is fair that the families should be represented by Senior Counsel at the oral hearing. However in view of the fact that there is no apparent conflict between the families and since there is unlikely to be any conflict in the future the Chairman will recommend to the Department that the families can be represented by a single Senior Counsel.

### **Experts**

15. The Inquiry will be advised by a Paediatric Anaesthetist, a Paediatrician, a Nurse Consultant and a Health Service Manager. These people will all be as independent of the Health Service in Northern Ireland as possible. Their details will be circulated in due course. An issue has been raised about the access which the families will have to expert advice. At this stage the Inquiry does not accept that the families need to have their own expert advice but such a need may arise later, depending on the position which is taken by the relevant Health Trusts and others. The Inquiry will also be seeking input from Dr Sumner who has given evidence at all three of the inquests which are relevant at this stage to the Inquiry and from Dr Evans who was retained by the Crawford family in their claim against Sperrin Lakeland Trust. The Inquiry has received a specific request from Adam's family

to consider whether it is necessary to seek expert advice on the discreet issue of paediatric renal transplantation and fluid management. That suggestion will be kept under review by the Inquiry which does not believe that it is necessary to reach a decision at this point.

### **Management and Administration**

16. In light of concerns raised by the families about the appointment of the Secretary and Deputy Secretary, the Chairman gave specific assurances as to their role at the preliminary hearing on 3 February. The Chairman accepts that it is his responsibility to ensure that their role continues to be managerial and administrative only and that they do not become involved in the substantive work of the Inquiry.

### **Forum for Hearing**

17. The Inquiry has received an enormous amount of documentation from interested parties and is likely to continue to receive documents in the months ahead. The oral hearings can best be conducted with the help of advanced information communication technology facilities similar to those used in the Saville Inquiry and the Shipman Inquiry. It is not practical to prepare a forum in, say, Belfast, which will accommodate this system and then move after a few weeks to, say, Derry for the hearings relating to the death of Raychel Ferguson. Accordingly the oral hearings will all be conducted in one place. The Inquiry is currently trying to identify a suitable forum.

## **Delays/Timescale**

18. As was indicated at the preliminary hearing, the extent of information coming before the Inquiry and the complication caused by the Police investigation make it necessary to reconsider the timescale within which a report can be prepared. The original Terms of Reference require the Chairman to report to the Minister by 1 June 2005 or such other date as may be agreed by the Department. There is no possibility of that timescale being met. The revised timescale is as follows:
- a. the documents which have been gathered will be available on the Inquiry's website by March/April 2005. It is hoped that they can be made available in stages. The list of issues which the Inquiry will investigate will also be available by that time;
  - b. witness statements will be sought in April and will have to be returned during May/June 2005;
  - c. the oral hearings will take place in October/November 2005;
  - d. the report will be available in February/March 2006.

This timetable allows some flexibility in the event of other issues arising or delays for various reasons.

## **Other Cases**

19. There is a possibility that some other deaths and events may have to be investigated. The Inquiry's major concern is whether an investigation into other events and the provision of a report which is comprehensive outweighs the

advantage of providing a report within a reasonable timescale which deals with the general issues which arise and the three deaths which are referred to in the Terms of Reference. A report which is delayed for, say, 2 or 3 years may be more comprehensive but might not be of greater value to the public. This issue will be kept under review. At this point the Inquiry is already aware of the possibility that a fourth death may have to be investigated. It is also aware from information received from the Department that within the last 20 years there has been a significant number of deaths in Northern Ireland in which Hyponatraemia or fluid management has been identified as the direct cause of death or as a secondary cause.

### **Progress Reports**

20. It is not proposed to have further public hearings until Autumn 2005. In order to reassure the public that progress is being made, the Inquiry aims to provide a regular update on its work. It will be apparent from these updates how the Inquiry is meeting the schedule which is set out in this paper.